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**DEFENDANT - SMF**  
**EXHIBIT 8**

BEFORE THE STATE CIVIL SERVICE  
COMMISSION

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IN RE: NANCY E. LEWEN vs. DEPARTMENT  
OF MILITARY VETERANS AFFAIRS

Appeal No. 28947

\* \* \* \* \*

BEFORE: David Zurn,  
Hearing Officer

CCD

HEARING: Monday, June 13, 2016  
9:33 a.m.

LOCATION: Pennsylvania Soldiers' and  
Sailors' Home  
Conference Room, 2nd Floor  
560 East Third Street  
Erie, PA 16507

Reporter: Shannon C. Fortsch

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A P P E A R A N C E S

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DENISE STOVALL

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## P R O C E E D I N G S

HEARING OFFICER:

Good morning all. My name is David Zurn. I'm a Hearing Officer for the State Civil Service Commission. I'm a previous Commissioner and I get my standing from that. So bear with me. I don't have a lot of these cases of late, so we'll try to move this through as expeditiously as possible. We'll open the hearing in the appeal of Nancy Lewen versus the Department of Military and Veterans Affairs.

(3/2/16 Letter -- produced, marked for identification and admitted into evidence as Commission Exhibit A.)

HEARING OFFICER:

And the Commission will put on as Commission Exhibit A a letter dated March 2, 2016 addressed to Ms. Lewen advising her of being suspended

1 pending investigation from her  
2 permanent Civil Service licensed  
3 practical nurse position at the  
4 Pennsylvania Soldiers' and Sailors'  
5 Home effective March 2 of 2016.

6 The letter goes on to  
7 explain that in addition to the aspects  
8 of returning her property and so on  
9 that she not be permitted on the  
10 grounds of Pennsylvania State ---

~~11 Pennsylvania Soldiers' and Sailors'~~  
12 Home until explicit permission is  
13 granted by the Commonwealth or human  
14 resource officer.

15 The letter also goes on  
16 to explain that Ms. Lewen has certain  
17 rights and responsibilities under this  
18 aspect including the right to appeal to  
19 the State Civil Service Commission  
20 signed by Barbara L. Raymond,  
21 Commandant Pennsylvania Soldiers' and  
22 Sailors' Home on behalf of the  
23 Honorable Anthony J. Carrelli,  
24 Brigadier General, Pennsylvania Air  
25 National Guard, Acting Adjutant

1 General.

2 (3/14/16 Letter --  
3 produced, marked for  
4 identification and  
5 admitted into evidence as  
6 Commission Exhibit B.)

7 HEARING OFFICER:

8 Commission Exhibit B is a  
9 letter dated March 14, 2016 advising  
10 Ms. Lewen that he is being --- she is  
11 being terminated from her position as a  
12 permanent Civil Service licensed LPN at  
13 the Pennsylvania Soldiers' and Sailors'  
14 Home. Again, the letter goes on to  
15 explain Ms. Lewen's rights and  
16 responsibilities under this including  
17 the aspect of the right to appeal this  
18 to the State Civil Service Commission.

19 (Appeal Request Form --  
20 produced, marked for  
21 identification and  
22 admitted into evidence as  
23 Commission Exhibit C.)

24 HEARING OFFICER:

25 Commission Exhibit C is

1 the appeal request form from Ms. Lewen  
2 in which she appeals both her  
3 suspension, her pending investigation  
4 and her suspension, that she gets  
5 reinstated to her position and  
6 expungement of all records, which  
7 includes full back pay.

8 Ms. Lewen also states  
9 some reasons claiming discrimination,  
10 but there is not sufficient explanation  
11 here that the Commissioners determine  
12 that this Commission --- this hearing  
13 will be heard under 951(a) only.

14 (5/5/16 Notice of Public  
15 Hearing -- produced,  
16 marked for identification  
17 and admitted into  
18 evidence as Commission  
19 Exhibit D.)

20 HEARING OFFICER:

21 And Commission Exhibit D  
22 is a notice of public hearing dated May  
23 5, 2016, scheduling notice is sent to  
24 Ms. Lewen and the Department of  
25 Military and Veterans Affairs advising

1 both parties the hearing has been  
2 scheduled for today's date, Monday,  
3 June 13th, 9:30 a.m. here in the  
4 Pennsylvania Soldiers' and Sailors'  
5 Home, conference room on the second  
6 floor.

7 The issue to be heard are  
8 Ms. Lewen's suspension pending  
9 investigation and removal from her  
10 position as a licensed practical nurse  
11 regular status. And the hearing will  
12 be held under 951(a) where the burden  
13 of proof rests with the Appointing  
14 Authority.

15 (Appellant's UPS Proof of  
16 Delivery -- produced,  
17 marked for identification  
18 and admitted into  
19 evidence as Commission  
20 Exhibit D-1.)

21 HEARING OFFICER:

22 Commission Exhibit D-1 is  
23 a UPS proof of delivery to Ms. Lewen.  
24 (Appointing Authority's  
25 UPS Proof of Delivery --

1 produced, marked for  
2 identification and  
3 admitted into evidence as  
4 Commission Exhibit D-2.)

5 HEARING OFFICER:

6 And Commission Exhibit  
7 D-2 is a similar notice from UPS  
8 advising the Veterans Affairs of  
9 today's hearing.

10 (Notice of Public Hearing

11 -- produced, marked for  
12 identification and  
13 admitted into evidence as  
14 Commission Exhibit D-3.)

15 HEARING OFFICER:

16 Commission Exhibit D-3 is  
17 the required notice of public hearing  
18 advising the public of today's hearing.  
19 The Commission will recognize Steven J.  
20 Bushinski. I'll get that straight  
21 sooner or later. Bushinski, Esquire  
22 representing the Department of Military  
23 and Veterans Affairs. And, Ms. Lewen,  
24 you are representing yourself; is that  
25 correct?

1 MS. LEWEN:

2 Right.

3 HEARING OFFICER:

4 The burden is under ---  
5 is for the Department of Military and  
6 Veterans Affairs and as such we're  
7 going to ask Mr. Bushinski to please  
8 start his hearing.

9 ATTORNEY BUSHINSKI:

10 Thank you, Mr. Zurn. Mr.

11 Zurn, before I get into the substantive  
12 part of my hearing I would like to talk  
13 to you about a possible joint exhibit  
14 that Ms. Lewen and I would introduce.  
15 Many of the allegations that were  
16 lodged against Ms. Lewen, the evidence  
17 was in the nature of posts on social  
18 media site, Facebook.

19 And while I had several  
20 of these posts they were provided to me  
21 by one of my witnesses who will testify  
22 today. Ms. Lewen has pointed out that  
23 the record was rather incomplete. We  
24 didn't have everything and she  
25 expressed concerns that the posts that

1 I was able to provide would be taken  
2 out of context and I agree with her. I  
3 mean, we need to have a complete and  
4 full record.

5 So Ms. Lewen obligingly  
6 printed out all Facebook posts that she  
7 had in her conversations with the  
8 witness whose name is Barry Blasic.  
9 And she provided them to me and she  
10 even numbered the pages and very ---  
11 also provided numbers on the side to  
12 --- so that we could make easy  
13 reference to particular parts of the  
14 Facebook posts.

15 So I've discussed this  
16 with Ms. Lewen and I think that she  
17 would probably be agreeable that we  
18 enter the Facebook posts, the complete  
19 record of them, as a joint exhibit. I  
20 believe that she will agree that they  
21 are authentic, that they are complete.  
22 She hasn't altered them in any way,  
23 shape or form and they're best evidence  
24 possible of Facebook posts.

25 MS. LEWEN:



16

1 Yes, I do. That's what I  
2 have here. I mean, just in case you  
3 hadn't, I brought them.

4 ATTORNEY BUSHINSKI:

5 So if that's agreeable  
6 to ---.

7 HEARING OFFICER:

8 If it's agreeable to both  
9 parties to bring it in in that form,  
10 certainly the Commission will take it  
11 in in that form. And you want to mark  
12 that as a joint exhibit?

13 ATTORNEY BUSHINSKI:

14 That's correct. Let me  
15 show it to Ms. Lewen first so she sees  
16 that I'm showing --- I would be  
17 entering the complete exhibit and I've  
18 altered nothing as well because I copy  
19 --- I haven't had a chance to go over  
20 this with her at this --- prior to the  
21 hearing.

22 MS. LEWEN:

23 Actually, what I'm not  
24 seeing in your copy is the highlighted  
25 parts where I had referenced

1 making ---.

2 ATTORNEY BUSHINSKI:

3 They didn't copy well.

4 You would actually see them if you  
5 looked real close. They're slightly  
6 shaded, but during the hearing I'm sure  
7 that you can, you know, point to them  
8 directly and emphasize it yourself.  
9 Simply put, yellow highlighting doesn't  
10 copy well.

11 MS. LEWEN:

12 Yeah. I had mine done by  
13 Staples and it came out like this  
14 (indicating), but it came out.

15 ATTORNEY BUSHINSKI:

16 Yes. I prefer to  
17 introduce mine because I don't want to  
18 emphasize any particular part of the  
19 Facebook posts and --- is that  
20 agreeable?

21 MS. LEWEN:

22 As long as it's on there,  
23 yeah. Yes.

24 ATTORNEY BUSHINSKI:

25 I will represent that it

18

1 is complete in form that Ms. Lewen had  
2 given to me.

3 MS. LEWEN:

4 I trust you. I believe  
5 you.

6 HEARING OFFICER:

7 All right. Thank you. I  
8 appreciate it, Ms. Lewen, that you  
9 agree to this. Shall we mark that  
10 Exhibit AA-1?

11 ATTORNEY RUSHINSKI:

12 AA-1?

13 HEARING OFFICER:

14 Yes. And perhaps you are  
15 going to bring this forth as your first  
16 exhibit, Ms. Lewen?

17 MS. LEWEN:

18 Yes. We had e-mailed  
19 about ---.

20 HEARING OFFICER:

21 So then let's mark it

22 AA-1 and AP-1.

23 (Facebook Posts --  
24 produced and marked for  
25 identification as

1 Appointing Authority  
2 Exhibit Number 1.)  
3 (Facebook Posts --  
4 produced and marked for  
5 identification as  
6 Appellant Exhibit Number  
7 1.)

8 ATTORNEY BUSHINSKI:

9 And AP-1.

10 HEARING OFFICER:

11 ~~Just that both parties~~  
12 are agreeable to this exhibit.

13 ATTORNEY BUSHINSKI:

14 Very good.

15 HEARING OFFICER:

16 Okay.

17 ATTORNEY BUSHINSKI:

18 All right. I'm just  
19 going to mark this quickly so that I  
20 can give Ms. Lewen a copy.

21 HEARING OFFICER:

22 It's a lot of hearsay.  
23 As long as you agree on it being made a  
24 part of the record we're going to put  
25 it in.

ATTORNEY BUSHINSKI:

Here's your copy.

MS. LEWEN:

I had actually filed a motion to suppress this hearsay and they denied it. I have a copy of that here. The Commission denied it, but then ---.

HEARING OFFICER:

Well, this is agreeable

between both parties and ---.

MS. LEWEN:

It's agreeable as long as a complete record is submitted.

HEARING OFFICER:

Exactly that, yes.

ATTORNEY BUSHINSKI:

Mark all of them like this AA-1 and AP-1. All right. I'll call my first witness, Mr. Bryan Bender.

MR. BENDER:

Sir, where would you like me to sit?

HEARING OFFICER:

1 I'm going to have you sit  
2 up there, but I'm going to ask you to  
3 stand for just a moment, Mr. Bender.  
4 Would you raise your right hand, sir?

5 -----

6 BRYAN BENDER, HAVING FIRST BEEN DULY  
7 SWORN, TESTIFIED AS FOLLOWS:

8 -----

9 HEARING OFFICER:

10 Thank you. Please be

11 ~~seated, Mr. Bender. And for the~~

12 record, your name, spelling your last  
13 name?

14 A. My name is Bryan Bender,  
15 B-R-Y-A-N, B-E-N-D-E-R.

16 HEARING OFFICER:

17 And, Mr. Bender, you're  
18 employed by the State ---?

19 A. Yeah, Department of Military and  
20 Veterans Affairs.

21 HEARING OFFICER:

22 Veterans Affairs, yes.

23 And your position, sir, is?

24 A. I'm a HR Analyst 3.

25 HEARING OFFICER:

1                   You're specifically here  
2 at Soldiers' and Sailors' Home?

3 A.       No, I work out of Fort  
4 Indiantown Gap in Annville,  
5 Pennsylvania in our headquarters  
6 office.

7                   HEARING OFFICER:

8                   Okay. All right. Thank  
9 you, Mr. Bender. And do you have a  
10 working title?

11 A.       Labor Relations Analyst.

12                   HEARING OFFICER:

13                   Okay. Thank you. You  
14 may proceed, Mr. Bushinski.

15                   ATTORNEY BUSHINSKI:

16                   Thank you, Mr. Zurn.

17 DIRECT EXAMINATION

18 BY ATTORNEY BUSHINSKI:

19 Q.       Mr. Bender, let's talk briefly  
20 about the duties of a Labor Relations  
21 Analyst. In the course of your duties  
22 as a Labor Relations Analyst with the  
23 Department of Military and Veterans  
24 Affairs are you sometimes called upon  
25 to investigate allegations of employee

1 misconduct?

2 A. Yes.

3 Q. Do you sometimes review  
4 recommendations for the imposition of  
5 discipline from the state veterans'  
6 homes operated by the Department of  
7 Military and Veterans Affairs?

8 A. Yes, I do.

9 Q. And do you also actually take  
10 part in the decision making process as  
11 to the imposition of discipline in  
12 particular cases?

13 A. Yes, I do.

14 Q. Let's talk a little bit about  
15 DMVA so the Commission knows exactly  
16 the nature of our organization. Is the  
17 Department of Military and Veterans  
18 Affairs an instrumentality of the  
19 Commonwealth of Pennsylvania?

20 A. Yes, it is.

21 Q. And does DMVA --- which is the  
22 acronym for Department of Military and  
23 Veterans Affairs. Does DMVA operate  
24 veterans' homes in the Commonwealth of  
25 Pennsylvania?



1 A. Yes, six of them.

2 Q. Are personnel who work at these  
3 state veterans' homes, are they  
4 considered to be employees of the  
5 Commonwealth of Pennsylvania?

6 A. They are.

7 Q. And they're also considered to  
8 be employees of that particular state  
9 veterans' home?

10 A. Yes.

11 Q. All right. So it's permissible  
12 to say that or it's proper to say that  
13 they're both DMVA employees and  
14 employees of the state veterans' home?

15 A. That would be correct.

16 Q. And the Pennsylvania Soldiers'  
17 and Sailors' Home where we are situated  
18 now, that is a state veterans' home  
19 operated by DMVA?

20 A. Yes, it is.

21 Q. Do you know when Nancy Lewen was  
22 first hired at PSSH?

23 A. I do not know the exact date,  
24 but I want to say it was around  
25 September of 2014.

1 Q. And what was the position she  
2 occupied at PSSH?

3 A. It would be a licensed practical  
4 nurse or LPN.

5 Q. In March of 2016, did PSSH  
6 contact you about allegations of  
7 misconduct against Ms. Nancy Lewen?

8 A. Yes, they did.

9 Q. Who was it at PSSH that  
10 contacted you about these allegations?

11 A. It would have been the  
12 Commandant, Barbara Raymond, and the HR  
13 Analyst here, Brian Skinner.

14 Q. Can you please describe for the  
15 record what the allegations were ---  
16 what allegations were made against Ms.  
17 Lewen? What did they say she did  
18 wrong?

19 A. Ms. Raymond had called both  
20 myself and the chief of our division,  
21 Kim Keiser (phonetic), and discussed an  
22 incident that occurred between Ms.  
23 Lewen and Mr. Blasic regarding an  
24 e-mail that was sent to him during his  
25 duty to his Commonwealth e-mail

1 regarding a tracking number of a letter  
2 that was sent to his wife.

3 Q. Let me interrupt you there. You  
4 said Mr. Blasic. Who is Mr. Blasic?

5 A. Mr. Blasic is a Commonwealth  
6 employee of PSSH and DMVA. He would  
7 also be a licensed practical nurse here  
8 at the home.

9 Q. Can you continue?

10 A. We discussed the investigation.

11 It was initially brought to our  
12 attention through the e-mail that was  
13 sent to him with the tracking number  
14 and through that there was background  
15 information provided and some open  
16 discussion that brought the Facebook  
17 messages and also private e-mails into  
18 it. Also a copy of the letter that was  
19 sent to his wife.

20 Q. Mr. Blasic's wife?

21 A. Yeah, Mr. Blasic's wife. It was  
22 brought to our attention and read  
23 thoroughly at the time as well. That  
24 was the initial conversation that  
25 started the ball rolling for our whole

1 investigation.

2 Q. Well, as a result of that  
3 conversation did you find it necessary  
4 to suspend Nancy Lewen from her job as  
5 an LPN?

6 A. Yes. So on that particular day  
7 it was decided that the severity of  
8 everything that was going on and the  
9 nature of the misconduct that was going  
10 on between Ms. Lewen and a co-worker

11 warranted suspension pending  
12 investigation so that we could further  
13 look into these allegations. And also  
14 remove any potential conflicts for  
15 hostile work environment from  
16 continuing.

17 Q. I believe this has already been  
18 introduced by Mr. Zurn as Commission  
19 Exhibit A, which is the March 2nd,  
20 2016 ---.

21 HEARING OFFICER:

22 Excuse me. You have  
23 Appellant's copies, AP-1 and AA-1,  
24 hanging up over there (indicating) and  
25 I'd ---

1 ATTORNEY BUSHINSKI:

2 Oh, I'm sorry.

3 HEARING OFFICER:

4 --- like to make sure  
5 that we had one for the court reporter  
6 and I would like to have one.

7 ATTORNEY BUSHINSKI:

8 please send him the  
9 original.

10 HEARING OFFICER:

11 Just got sort of stuck  
12 there. Okay? I apologize.

13 ATTORNEY BUSHINSKI:

14 No problem, sir. The  
15 original down to Mr. Zurn and we'll get  
16 you a copy for the Commission.

17 HEARING OFFICER:

18 So this is Commission  
19 Exhibit A. It's not necessary that  
20 Commission ---.

21 ATTORNEY BUSHINSKI:

22 All right.

23 HEARING OFFICER:

24 And the court reporter  
25 does have those. Okay? Commission

1 exhibits are all here. You're free to  
2 move them with the witness, that's  
3 fine.

4 ATTORNEY BUSHINSKI:

5 Okay.

6 BY ATTORNEY BUSHINSKI:

7 Q. Well, Mr. Bender, will you take  
8 a moment to examine that document which  
9 has been marked --- introduced as  
10 Commission Exhibit Number A?

11 A. Okay.

12 Q. Now, is that the letter that you  
13 sent to Ms. Lewen suspending her?

14 A. Yes, this is the suspension  
15 pending letter.

16 Q. After PSSH suspended Ms. Lewen  
17 did you continue to conduct an  
18 investigation into the allegations  
19 against her?

20 A. Yes, that's correct.

21 Q. And what actions did you take to  
22 investigate the allegations? What did  
23 you do?

24 A. Once we had the initial  
25 conversation and we decided it was

1 appropriate to suspend pending  
2 investigation, the investigation,  
3 obviously, continued and that is when  
4 we started going through the evidence  
5 that was presented to us by Mr. Blasic.

6 And by going through that  
7 evidence we determined different people  
8 that we would have to talk to either  
9 interview to gather more information.

10 We started looking into other  
11 allegations. ~~There was something that~~  
12 came forth throughout the investigation  
13 also that was in regards to like a  
14 harassment letter that was supposedly  
15 written towards the supervisor. So we  
16 investigated that as well.

17 Then obviously going through the  
18 different policies, looking at the  
19 different policies that applied to this  
20 particular incident, again, talking  
21 with the police, looking at the  
22 evidence, particularly the Facebook  
23 posts, the e-mails, the letter to the  
24 wife, the letter that was written  
25 towards the supervisor.

1 Q. And as far as Ms. Lewen's status  
2 at this time she was under suspension?

3 A. Yes, she was not permitted in  
4 the facility at that time.

5 Q. Is it typical to suspend  
6 somebody under certain circumstances  
7 such as this?

8 A. Yes. Yes, it is. We would  
9 typically suspend pending  
10 investigation. Any time that it  
11 involves co-workers, especially, hostile  
12 work environment, workplace violence,  
13 sexual harassment, resident abuse,  
14 those types of situations.

15 Q. So your act of suspending her  
16 was by all means unusual?

17 A. No, not at all.

18 Q. Now, let me ask you this  
19 question. After you conducted your  
20 investigation did you convene what is  
21 called a PDC for Ms. Lewen?

22 A. Yes. And for the record a PDC  
23 is an acronym that we use for a  
24 pre-disciplinary conference.

25 Q. What's the purpose of conducting



1 a PDC?

2 A. A PDC is part of like the due  
3 process and the just cause of an  
4 employee. What it is is when you're  
5 conducting an investigation, obviously,  
6 there is alleged actions or an accused  
7 perpetrator. The PDC is a chance to  
8 have those questions answered, so the  
9 questions that we have we are going to  
10 then ask the accused or the alleged.

11 And it is also an opportunity  
12 for them to present their side of the  
13 story and provide anything that they  
14 feel relevant at that time, you know,  
15 to their case.

16 Q. And is this a standard type of  
17 practice at the PDC for these  
18 circumstances?

19 A. Yes, a PDC must always occur.

20 Q. Did you conduct more than one  
21 PDC with Ms. Lewen?

22 A. We ended up reconvening the PDC.  
23 The initial PDC would have been  
24 conducted on March 7th and then it was  
25 reconvened again on March 10th.

1 Q. Were you present for the PDCs?

2 A. I was present via telephone.

3 Q. Was Ms. Lewen entitled to union  
4 representation at the PDC?

5 A. Yes, she was.

6 Q. Is that standard practice to  
7 allow somebody who is accused of  
8 misconduct to have union  
9 representation?

10 A. Someone who is represented by  
11 the union, yes.

12 Q. And was Ms. Lewen represented by  
13 union?

14 A. Yes, she was represented by  
15 AFSCME.

16 Q. Was her union representative  
17 there?

18 A. Yes.

19 Q. At both PDCs?

20 A. Yes.

21 Q. What was the result of the first  
22 PDC? You said that was conducted on  
23 March 7, 2016. Did you investigate  
24 further?

25 A. Yes. Based on the questions

1 that were asked, the answers that were  
2 provided and any information that was  
3 presented to us at that time, we  
4 continued to look into the matters that  
5 she brought to our attention. Based on  
6 some of the answers that were provided  
7 to us, it actually led us to look down  
8 different avenues of the investigation.

9 You know, some parts of the  
10 investigation that we might have looked

11 at we looked into a little bit further.

12 I don't remember exact details of it,  
13 but there might have actually been  
14 different avenues that we went  
15 completely leading us to reconvene the  
16 PDC at a later date.

17 Q. I'm going to show you an exhibit  
18 as soon as Mrs. Stovall's done marking  
19 it. I'm showing you what I have had  
20 marked as Appointing Authority ---.

21 HEARING OFFICER:

22 We have one for the court

23 reporter?

24 MS. STOVALL:

25 Absolutely.

1 BY ATTORNEY BUSHINSKI:

2 Q. I'm showing what I had marked as  
3 Appointing Authority Exhibit Number 2.

4 (3/7/16 E-mails &  
5 Facebook Posts --  
6 produced and marked for  
7 identification as  
8 Appointing Authority  
9 Exhibit Number 2.)

10 BY ATTORNEY BUSHINSKI:

11 Q. Can you take a look at that  
12 document?

13 WITNESS COMPLIES

14 A. Okay.

15 BY ATTORNEY BUSHINSKI:

16 Q. Did you see that document when  
17 you were conducting your investigation  
18 into the allegations against Ms. Lewen?

19 A. Yes, this was actually something  
20 that came out during the investigation.  
21 It would have been around the same time  
22 as the PDC.

23 Q. And who provided that document  
24 to PSSH?

25 A. This would have been provided by

1 Mr. Barry Blasic.

2 Q. And this document contains some  
3 excerpts of Facebook posts from Ms.  
4 Lewen to Mr. Blasic?

5 A. That is correct. It is his  
6 typed wording or statement in the very  
7 beginning at the top of page one and  
8 also on the last page at the very  
9 bottom that would be Mr. Blasic's  
10 statement. And then everything in

11 between looks to be excerpts from  
12 Facebook posts or messages.

13 Q. Now, is this how Mr. Blasic  
14 initially complained to you of Ms.  
15 Lewen's conduct?

16 A. The initial was he came to us,  
17 expressed everything to us. I believe  
18 he showed us a lot of the Facebook  
19 posts, private e-mails, a letter to his  
20 wife and then this was him putting it  
21 in writing for us.

22 Q. All right. As a result of your  
23 investigation after the March 7th, 2016  
24 PDC, did you conclude that it was  
25 necessary then to have a follow-up PDC?

1 A. Yes. Yes, we did.

2 Q. And when did that take place?

3 A. The follow-up took place three  
4 days later. It would have been March  
5 10th of 2016.

6 Q. Was Ms. Lewen present for a  
7 second PDC?

8 A. Yes, she was.

9 Q. That's the one on March 10,  
10 2016?

11 A. Correct, sir.

12 Q. And did she have union  
13 representation at the second PDC?

14 A. Yes.

15 Q. After you got done conducting  
16 the PDCs, the two PDCs, and you got  
17 done conducting your investigation, did  
18 you reach a conclusion as to whether  
19 the allegations against Ms. Lewen had  
20 any basis in fact?

21 A. Yes.

22 Q. What was your conclusion?

23 A. Our conclusion that she was  
24 definitely --- our conclusion was that  
25 she was guilty of violations of the

1 sexual harassment, the workplace  
2 violence, the IT user agreement.  
3 Stemming from our own internal policies  
4 also ranging to Commonwealth policy.

5 Q. Did you discuss your conclusion  
6 with the Commandant of PSSH, which is  
7 Ms. Barbara Raymond?

8 A. Yes, I did.

9 Q. As Commandant, she's the head  
10 person up here?

11 A. Yes, she would be the person who  
12 is in charge of this facility.

13 Q. Did you discuss your conclusions  
14 with any of your supervisors at the  
15 Department of Military and Veterans  
16 Affairs at Fort Indiantown Gap?

17 A. Yes, I did.

18 Q. When you were having these  
19 discussions with Ms. Raymond and with  
20 your supervisors at Fort Indiantown  
21 Gap, was the level of discipline to  
22 impose on Ms. Lewen discussed?

23 A. Yes.

24 Q. Did everyone agree that it was  
25 appropriate to fire her?

1 A. Yes, they did.

2 Q. Mr. Bender, I want to talk to  
3 you a little bit about progressive  
4 discipline, the concept of progressive  
5 discipline. Are you familiar with the  
6 concept of progressive discipline  
7 insofar as it relates to employee ---  
8 imposing discipline on employees?

9 A. Yes.

10 Q. What's meant by the term  
11 progressive discipline?

12 A. Progressive discipline just  
13 shows that within the Commonwealth and  
14 I mean, even outside of the  
15 Commonwealth at some places, that there  
16 is a progression that can be followed  
17 when there are certain infractions.  
18 For an example I would use something  
19 basic like time and attendance.

20 If somebody has trouble coming  
21 to work or they don't show up, being  
22 late, that kind of thing, you know, you  
23 start off with warning the employee and  
24 work your way up through like an oral  
25 reprimand, written reprimand. And



1 there are also suspension levels; level  
2 one being a suspension and level two  
3 being a suspension with final warning  
4 and then ultimately termination.

5 Q. All right. Is progressive  
6 discipline something that must be  
7 followed in every case?

8 A. No, every case is different  
9 based on the circumstances of every

10 case and also the egregiousness of the  
11 infractions at hand determine what the  
12 level of discipline starts at and where  
13 it ends up, or whether or not you need  
14 to follow progressive discipline.

15 Q. Well, when you discuss the level  
16 of discipline to impose on Ms. Lewen  
17 with the Commandant and with your  
18 supervisors at the Department of  
19 Military and Veterans Affairs, was  
20 there any discussion as to imposing a  
21 lesser form of discipline on her, say,  
22 like a suspension rather than a  
23 termination?

24 A. I'm not going to say that it  
25 wasn't discussed because likely when

1 we're --- discussion when we're raising  
2 to the level we're looking at  
3 termination, especially based on the  
4 particular incident at hand, we will  
5 also always look at other levels of  
6 discipline, too, until we come to a  
7 conclusion of what we feel is the most  
8 appropriate action.

9 Q. All right. So in Ms. Lewen's  
10 case why were the lesser forms of  
11 discipline suspension --- suspension,  
12 suspension with a warning, why were  
13 they rejected?

14 A. It was based on the incident at  
15 hand, the egregiousness of it, the fact  
16 of the hostile work environment, the  
17 harassment, the intimidation and  
18 bullying. You know, those things  
19 coupled together it just --- it created  
20 such a disturbance in the workplace  
21 that we felt as a whole that it was  
22 within our best interests to part ways.

23 Q. So PSSH fired Ms. Lewen on March  
24 14th of 2016?

25 A. That is correct.

1 Q. And how did they notify her that  
2 she was fired?

3 A. I wrote a letter and I would  
4 send it out here to the home. It is  
5 reviewed and then signed by the  
6 Commandant and then mailed to the  
7 employee.

8 Q. So she was notified by letter?

9 A. Yes.

ATTORNEY BUSHINSKI:

10 All right. If I may have  
11 a moment, sir. I just want to make  
12 sure that I'm not confusing anybody  
13 with marking the same exhibit twice. I  
14 want to be able to show him --- Mr.  
15 Zurn already has this.

MS. STOVALL:

17 This was AA --- the joint  
18 exhibit.  
19

ATTORNEY BUSHINSKI:

20 It's a joint exhibit, so  
21 I think it's ---  
22

MS. STOVALL:

23 The Commission exhibit.  
24

ATTORNEY BUSHINSKI:

25

1                    --- Commission Exhibit  
2       Number ---. I'm sorry. It's  
3       Commission's Exhibit Number, what, B?

4                    HEARING OFFICER:

5                    B.

6                    MS. STOVALL:

7                    Yeah.

8                    ATTORNEY BUSHINSKI:

9                    Marked as Commission's  
10       Exhibit Number B. Mr. Zurn already has  
11       that. I just want to be able to show  
12       that to Ms. Lewen what I'm talking  
13       about and also give it to Mr. Bender so  
14       that he can identify that because we're  
15       going to talk about policies there.  
16       And so he's going to need to have that  
17       in his hand.

18                    MS. STOVALL:

19                    Mr. Zurn get the original  
20       again?

21                    ATTORNEY BUSHINSKI:

22                    He's got that.

23                    MS. STOVALL:

24                    He has that one. Okay.

25       And would you like one? Okay. There's

1 one for you.

ATTORNEY BUSHINSKI

2 Okay. Very good. Thank

3  
4 you.

MS. STOVALL:

5 Very good.

6 ATTORNEY BUSHINSKI:

7 All right.

8  
9 BY ATTORNEY BUSHINSKI:

10 Q. Mr. Bender, would you take a  
11 moment to examine that letter which has  
12 been already introduced by Mr. Zurn  
13 into the record as Commission's Exhibit  
14 Number B.

15 A. Okay.

16 Q. Did you write that letter?

17 A. Yes, sir, I did.

18 Q. In the letter you were very  
19 explicit as to why PSSH fired Ms.  
20 Lewen. You list I think seven policies  
21 that PSSH accused Ms. Lewen of having  
22 violated. I believe those policies are  
23 listed in the second full paragraph of  
24 the letter?

25 A. Yes, that is correct.

1 Q. In your position as a Labor  
2 Relations Analyst with the Department  
3 of Military and Veterans Affairs are  
4 you familiar with each of those  
5 policies listed in the second paragraph  
6 of the March 14th termination letter  
7 introduced as Commission's Exhibit  
8 Number B?

9 A. Yes, I am.

10 Q. Since DMVA has alleged that Ms.  
11 Lewen violated these policies it's  
12 going to be necessary to discuss each  
13 of them briefly, so the first thing I'm  
14 going to do though to try to speed  
15 things up is to introduce --- have you  
16 look at the policies and sponsor them  
17 for the record.

18 ATTORNEY BUSHINSKI:

19 So mark this as the next

20 AA.

21 (Standards of Conduct &  
22 Work Rules -- produced  
23 and marked for  
24 identification as  
25 Appointing Authority

Exhibit Number 3.)

MS. STOVALL:

AA. Okay.

ATTORNEY BUSHINSKI:

Mr. Zurn gets the original one. It's been awhile, Mr. Zurn, since I did this as well, so that's why I'm ---.

HEARING OFFICER:

Okay. Fine.

ATTORNEY BUSHINSKI:

Now, mark this exhibit next in order.

MS. STOVALL:

Four.

(Governor's Office Prohibition of Sexual Harassment Executive Order -- produced and marked for identification as Appointing Authority Exhibit Number 4.)

BY ATTORNEY BUSHINSKI:

Q. While Ms. Stovall's marking exhibits, Mr. Bender, what I'm going to

1 do. is I'm going to hand you an exhibit  
2 so that you can take the opportunity to  
3 look at them and answer the questions  
4 that I'm going to pose once everything  
5 is marked and the copy's distributed.

6 A. Okay.

7 MS. STOVALL:

8 Mr. Zurn. Any more?

9 ATTORNEY BUSHINSKI:

10 That's it.

11 MS. STOVALL:

12 Okay.

13 BY ATTORNEY BUSHINSKI:

14 Q. Mr. Bender, I've handed you what  
15 I had marked as Appointing Authority's  
16 Exhibit Number 3, Appointing  
17 Authority's Exhibit Number 4,  
18 Appointing Authority's Exhibit Number  
19 5, Appointing Authority's Exhibit  
20 Number 6, Appointing Authority's  
21 Exhibit Number 7, Appointing  
22 Authority's Exhibit Number 8 and  
23 Appointing Authority's Exhibit Number  
24 9.

25 (Governor's Office Sexual



1 Harassment Management  
2 Directive -- produced and  
3 marked for identification  
4 as Appointing Authority  
5 Exhibit Number 5.)

6 (DMVA Prohibition of  
7 Sexual Harassment --  
8 produced and marked for  
9 identification as  
10 Appointing Authority

11 Exhibit Number 6.)

12 (DMVA Workplace Violence  
13 & Bullying Prevention  
14 Policy -- produced and  
15 marked for identification  
16 as Appointing Authority  
17 Exhibit Number 7.)

18 (Governor's Office  
19 Workplace Violence  
20 Management Directive --  
21 produced and marked for  
22 identification as  
23 Appointing Authority  
24 Exhibit Number 8.)

25 (Governor's Office IT

1 Acceptable Use Management  
2 Directive -- produced and  
3 marked for identification  
4 as Appointing Authority  
5 Exhibit Number 9.)

6 BY ATTORNEY BUSHINSKI:

7 Q. Do you have each of these  
8 policies?

9 A. Yes, sir.

10 Q. Now, you had a period of time to  
11 look over them while we were having  
12 these documents marked, so I would like  
13 to ask you in regard to Appointing  
14 Authority's Exhibit Number 3 can you  
15 please identify this document for the  
16 record?

17 A. Yes. This is the current  
18 Department of Military and Veterans  
19 Affairs standard of conduct work rules.

20 Q. Now, was this policy in effect  
21 when Ms. Lewen was employed at  
22 Pennsylvania Soldiers' and Sailors'  
23 Home?

24 A. Yes.

25 Q. Looking at Appointing

1 Authority's Exhibit Number 4, can you  
2 identify this document for the record?

3 A. Yes. This is the Commonwealth  
4 of Pennsylvania's executive order on  
5 the prohibition of sexual harassment in  
6 the Commonwealth.

7 Q. Going to the next document,  
8 which is marked Appointing Authority's  
9 Exhibit Number 5, can you identify this  
10 document for the record?

11 A. Yes. This is the Commonwealth  
12 of Pennsylvania management directive  
13 also on the prohibition of sexual  
14 harassment in Commonwealth work  
15 settings.

16 Q. Just so we're clear that's  
17 management directive 505.30?

18 A. That is correct.

19 Q. Appointing Authority's Exhibit  
20 Number 5. Appointing Authority's  
21 Exhibit Number 6, can you identify that  
22 document for the record?

23 A. Yeah. This is the DMVA's policy  
24 information memorandum on workplace  
25 violence, workplace bullying prevention

1 policy. And for the record, policy  
2 information memorandum is shortened by  
3 PIM if that helps you at all.

4 Q. All right. Are we on Appointing  
5 Authority's Exhibit Number 6 or 7 with  
6 that?

7 A. I'm sorry.

8 Q. Let's go back to Appointing  
9 Authority's Exhibit Number 6. I think  
10 you got them out of order. What is

11 Appointing Authority's Exhibit Number  
12 6?

13 A. This is the DMVA prohibition of  
14 sexual harassment.

15 Q. That's the policy for DMVA?

16 A. Yes.

17 Q. Now, Appointing Authority's  
18 Exhibit Number 7, can you identify that  
19 for the record?

20 A. Yes, this would be the DMVA PIM  
21 workplace violence and workplace  
22 bullying prevention policy.

23 Q. Appointing Authority's Exhibit  
24 Number 8?

25 A. This would be the Commonwealth

1 of Pennsylvania management directive  
2 205.33 on workplace violence.

3 Q. And Appointing Authority's  
4 Exhibit Number 9?

5 A. This is the Commonwealth of  
6 Pennsylvania management directive  
7 205.34. It is the Commonwealth's  
8 information technology acceptable use  
9 policy.

10 Q. All right. In her capacity as a  
11 Commonwealth of Pennsylvania employee,  
12 an LPN at Pennsylvania Soldiers' and  
13 Sailors' Home, was Nancy Lewen  
14 obligated to comply with each of these  
15 policies, which are introduced as  
16 Appointing Authority's Exhibit Number 3  
17 through Appointing Authority's Exhibit  
18 Number 9?

19 A. Yes, she would.

20 Q. Were each of these policies in  
21 effect at the Pennsylvania Soldiers'  
22 and Sailors' Home at the time that  
23 Nancy Lewen was employed by PSSH?

24 A. Yes, they were.

25 Q. Let's talk about the first

1 policy, the first document introduced,  
2 which is Appointing Authority's Exhibit  
3 Number 3. Can you go to that document?

4 A. Okay.

5 Q. Now, this is the most general of  
6 the policies that you listed in your  
7 letter of March 14, 2016; correct?

8 A. Yes.

9 Q. Before we get into the specifics  
10 of this policy, of the standards of

11 conduct and the work rules, I want to  
12 refer you to the second paragraph of  
13 the very first page of the standards of  
14 conduct and work rules. Are you there?

15 A. Yes, sir.

16 Q. Can you state briefly what  
17 requirements of the language of the  
18 second paragraph of the DMVA's  
19 standards of conduct and work rules  
20 imposes on the DMVA employees?

21 A. Basically what --- that  
22 paragraph breaks it down to the fact  
23 that, you know, this does not limit  
24 infractions to just this document and  
25 that employees of the DMVA are also

1 subject to all Commonwealth policies as  
2 well as internal policies of the DMVA.

3 Q. So is it fair to state that this  
4 policy imposes a requirement on DMVA  
5 employees to obey all these other  
6 policies that we have introduced today?

7 A. Yes, that is correct.

8 Q. Please refer to page four of the  
9 DMVA standards of conduct and work  
10 rules.

11 A. Okay.

12 Q. There's a section captioned  
13 unauthorized behavior and there are  
14 several prohibitions listed under that  
15 section. I'd like to ask you when you  
16 made the decision to fire Ms. Lewen had  
17 you considered Ms. Lewen violating  
18 these prohibitions? Let me talk about  
19 them one at a time. In regard to the  
20 first prohibition, which in general  
21 deals with workplace violence, do you  
22 consider Ms. Lewen to have violated  
23 this prohibition in any way?

24 A. Yes. Yes, I do.

25 Q. Tell the Hearing Officer and the

1 Commission how you feel Ms.

2 violated that particular pr

3 A. Well, the first pro

4 states any action which viola

5 Department of Commonwealth workplace

6 violence policy. Being that the

7 workplace violence policy is one of our

8 --- one of the items you have proposed

9 I'm sure we'll get into greater detail

10 of that, but it also goes on to say

11 including but not limited to bodily

12 harm, threatening, intimidating,

13 coercing or interfering with fellow

14 employees, supervisors, residents or

15 general public.

16 Throughout the investigation

17 this could, you know, take into account

18 the actions against Mr. Blasic both

19 inside and outside of work because even

20 the actions outside of work eventually

21 had led into the workplace. A lot of

22 the conversations that were taking

23 place were in regards to work.

24 The actions that took place with

25 e-mail being sent to him, you know, had



1 a great effect. It was considered  
2 threatening; it was considered  
3 intimidating. It was also interfering  
4 with that employee because it affected  
5 his work.

6 There's also the fact that, you  
7 know, her actions had created a hostile  
8 work environment not just between her  
9 and a co-worker, but the entire  
10 workplace as a whole.

11 Q. Well, let's talk about the  
12 second prohibition, threatening,  
13 intimidating and interfering with or  
14 using abusive or profane language. Is  
15 it PSSH's position that Ms. Lewen  
16 violated that prohibition as well?

17 A. Yes.

18 Q. And how did she do that?

19 A. Again, it was the threatening  
20 and intimidating nature of the  
21 communications that were going back and  
22 forth. Well, I shouldn't even say back  
23 and forth because the communication was  
24 only going one direction. It was  
25 coming from Ms. Nancy Lewen going to

1 Mr. Barry Blasic.

2 You know, through the  
3 investigation it was determined that  
4 this was done in an effort to basically  
5 retaliate against Mr. Blasic. There  
6 was certainly a motive here. Ms. Lewen  
7 was looking to date and I believe she  
8 even made reference as far as to have a  
9 relationship and maybe eventually  
10 marrying Mr. Blasic.

11 ~~It was our position that once~~  
12 these communications got going both  
13 ways that it had then became more of a  
14 hostile conversation, which eventually  
15 led to her taking action against Mr.  
16 Blasic and using them to threaten and  
17 intimidate.

18 Q. Prohibition number ten prohibits  
19 the reporting of false allegations or  
20 statements; is that correct?

21 A. Yes.

22 Q. Now, is it PSSH's position that  
23 Ms. Lewen violated prohibition number  
24 ten?

25 A. Yes.

1 Q. How'd she do that?

2 A. As I had stated earlier, during  
3 our investigation it was determined  
4 that there was --- I want to say it was  
5 a letter that was written about her  
6 supervisor, which would be Mr. Ray Hamm  
7 if I'm correct. In that document,  
8 which she references in her Facebook  
9 posts that --- her Facebook messages to  
10 Mr. Blasic she talks about how she is  
11 ~~anticipating writing this and about how~~  
12 she's going to add all these different  
13 things in.

14 And then in turn she ends up  
15 handing it over to Mr. Hamm and saying,  
16 here, this is what I'm going to file  
17 against you, read it. Later in the  
18 investigation through her own admission  
19 she said that it was done as a joke or  
20 that it was jokingly given to Mr. Hamm.  
21 So that led us to make the  
22 determination that the allegations were  
23 not, indeed, true.

24 Q. So basically this is for making  
25 a false allegation of misconduct on the

1 part of another employee?

2 A. Correct..

3 Q. Let's refer to the last  
4 prohibition, number 12, any acts of  
5 retaliation against fellow employees,  
6 supervisors, residents or the general  
7 public. Is it the position of the  
8 Pennsylvania Soldiers' and Sailors'  
9 Home that Ms. Lewen violated this  
10 particular prohibition?

11 A. Yes.

12 Q. And how?

13 A. Again, the retaliation. Through  
14 our investigation it was determined  
15 that, you know, once Mr. Blasic had cut  
16 off the communication tie or Ms. Lewen  
17 got the message that he was not willing  
18 to date her at that particular time,  
19 that then led to acts of retaliation  
20 against Mr. Blasic with a letter to his  
21 wife, the e-mails that were sent to  
22 him, the e-mail that was sent to his  
23 Commonwealth e-mail with a tracking  
24 number.

25 It is also our position that the

1 letter to Mr. Hamm in which she handed  
2 him, which we feel is a means of  
3 intimidation, was done in retaliation.  
4 as well because she was removed from a  
5 unit.

6 Q. All right. Let's move on to the  
7 next policy. Appointing Authority's  
8 Exhibit Number 4, executive order 2002-  
9 4, prohibition of sexual harassment in  
10 the Commonwealth. Do you have that?

11 A. Yes, sir.

12 Q. All right. Referring to  
13 paragraph number two, subsection C,  
14 which is I think on the second page.  
15 Is it the position of the Pennsylvania  
16 Soldiers' and Sailors' Home that Ms.  
17 Lewen violated that particular  
18 subsection of the executive order?

19 A. Yes. That section of the  
20 executive order states such conduct has  
21 the purpose or effect of unreasonably  
22 interfering with an individual's work  
23 performance or creating an intimidating  
24 hostile or offensive work environment.

25 Q. Now, when you're talking about

1 her violation of this particular  
2 policy, this executive order, are we  
3 talking about the sexual harassment of  
4 Mr. Barry Blasic?

5 A. Yes.

6 Q. And Mr. Barry Blasic, that's a  
7 fellow employee?

8 A. Yes, Mr. Blasic is an LPN here  
9 at the PSSH.

10 Q. Explain to the Hearing Officer  
11 and the Commission now did Ms. Bender

12 violate this particular policy in  
13 relation to Mr. Barry Blasic?

14 A. Her actions on or about the  
15 beginning of March when this was  
16 brought to our attention towards Mr.  
17 Blasic, again, were means of  
18 intimidating him. It affected his work  
19 so much that I believe that he actually  
20 had to go home after receiving some of  
21 the communications from her.

22 Q. That's intimidation, Mr. Bender.  
23 What about sexual harassment?

24 A. Well, it also creates a hostile  
25 and offensive work environment because,

1 you know, Mr. Blasic has to work with  
2 Ms. Lewen.

3 Q. Well, what did she do? What is  
4 it that you allege she had done that  
5 she sexually harassed Mr. Blasic is  
6 what I'm asking?

7 A. Oh, it would be --- I'm trying  
8 to think of how ---. She was seeking a  
9 relationship with Mr. Blasic and, you  
10 know, he did not reciprocate that. And

11 then she then did these things in an  
12 effort to get back at him. Even the  
13 context of the messages that were sent,  
14 you know, they were sexually explicit.

15 The letter that was sent to the  
16 wife, the e-mail that was sent to him,  
17 it was all tied in due to the fact  
18 that, you know, he was refusing to go  
19 on a date.

20 Q. All right. Let's move on to the  
21 next policy marked as Appointing  
22 Authority's Exhibit Number 5. Are you  
23 there?

24 A. Yes, sir.

25 Q. And this is management directive

1 number 505.30, the prohibition of  
2 sexual harassment in Commonwealth work  
3 settings. Is this really any different  
4 than the executive order issued by the  
5 Governor?

6 A. No. It's actually more of an  
7 expansion of what the executive order  
8 would be. It goes into a little bit  
9 greater detail. Other than that, it  
10 would maintain the same substance of  
11 the executive order.

12 Q. Now, is it PSSH's position that  
13 Ms. Lewen violated the substance of  
14 this management directive as well?

15 A. Yes.

16 Q. Let's go to the business of  
17 workplace violence. Oh, I'm sorry. We  
18 have one more sexual harassment policy.  
19 Appointing Authority's Exhibit Number  
20 6, prohibition of sexual harassment  
21 dated February 12th, 2014. And is that  
22 the policy against sexual harassment  
23 that's issued by the Department of  
24 Military and Veterans Affairs?

25 A. Yes, it is.



1 Q. And is it PSSH's position that  
2 Ms. Lewen violated that policy?

3 A. Yes.

4 Q. Again, by her treatment of Barry  
5 Blasic?

6 A. Correct.

7 Q. So you have three sexual  
8 harassment policies in here.

9 Essentially you have one that's an  
10 executive order issued by the Governor

11 of the Commonwealth, you have a  
12 management directive which is marked as  
13 AA Number 5 and now you have a  
14 prohibition of sexual harassment  
15 Department of Military and Veterans  
16 Affairs' policy which is marked as  
17 AA-6?

18 A. Correct.

19 Q. And is it PSSH's position that  
20 she violated each of these policies?

21 A. Yes.

22 Q. Basically by the same conduct  
23 towards Barry Blasic?

24 A. Yeah, it would all be the same  
25 conduct. All the policies kind of tie

1 off of one another.

2 Q. Now, let's go into workplace  
3 violence. Let's talk about policy at  
4 Appointing Authority's Exhibit Number  
5 7. That's the policy information  
6 memorandum issued by the Department of  
7 Military and Veterans Affairs dated  
8 (sic) 09-008. I'm going to invite your  
9 attention to page two under the caption  
10 --- under section caption inappropriate  
11 workplace behavior.

12 A. Okay.

13 Q. Can you read that section into  
14 the record, please? It's very short.

15 A. Inappropriate behavior includes  
16 actions unacceptable for the workplace.  
17 Inappropriate workplace behavior may  
18 include attendance problems, decreased  
19 productivity, inconsistent work  
20 patterns, poor on the job  
21 relationships, unusual/changed  
22 behaviors, personal conflicts and  
23 disruptive behavior and fighting.

24 Q. Is it your position that Ms.  
25 Lewen had violated the prohibitions of

1 this management directive, which is  
2 marked as AA Number 7?

3 A. Yes.

4 Q. How? How did she do that?

5 A. Well, we have the disruptive  
6 behavior. While there was no fighting,  
7 there was obviously very disruptive  
8 behavior there because the  
9 communication was being sent to Mr.  
10 Blasic at work, which, again,

11 interrupted his day. ~~It took him off~~  
12 the floor, eventually had him I believe  
13 sent home or he went home under his own  
14 wellbeing.

15 You had the personal conflicts,  
16 the unusual or changed behavior, the  
17 fact that, you know, you have a  
18 co-worker now kind of lashing out at  
19 another employee or another co-worker,  
20 which then in turn leads to poor on the  
21 job relationship. Also, you know,  
22 putting people in very tense  
23 situations. These people have to work  
24 together.

25 Q. Besides her actions towards Mr.

1 Barry Blasic, does PSSH consi-  
2 actions towards anyone else v.  
3 this management directive?

4 A. Yeah. This would also b  
5 into account with the situation between  
6 Ms. Nancy Lewen and the supervisor, Mr.  
7 Ray Hamm, again, stemming back from the  
8 letter that was given to him by her  
9 basically citing discrimination against  
10 this very person.

11 She took it as far as to write  
12 --- I believe it was a four-page  
13 document of discrimination against a  
14 supervisor, turns it over to the  
15 supervisor and said, here, I want you  
16 to read this. And then even goes as  
17 far as in her one-sided conversation  
18 with Mr. Blasic to say that she found  
19 herself giggling about it later in the  
20 night with no witnesses.

21 Q. Is it PSSH's position that the  
22 document she provided to Mr. Hamm or  
23 the complaint that she provided to him  
24 were false?

25 A. Yeah. The investigation later

1 determined that the allegations made in  
2 that letter were, indeed, not true.

3 Q. I'd like to direct your  
4 attention to the section captioned  
5 bullying. If you would, take a moment  
6 to read that.

7 A. Would you like me to read it out  
8 loud?

9 Q. Please.

10 A. Okay. Workplace bullying is  
11 repeated, health-harming mistreatment,  
12 verbal abuse or conduct which is  
13 threatening, humiliating and/or  
14 intimidating. Bullying also includes  
15 sabotage that interferes with work or  
16 exploitation of a known physiological  
17 (sic) or physical vulnerability.  
18 Workplace bullying can lead to  
19 instances of workplace violence.

20 Q. Does PSSH consider that Ms.  
21 Lewen engaged in an act of workplace  
22 bullying at all?

23 A. Yes.

24 Q. And who was that directed  
25 against?

1 A. It would have been directed  
2 towards the supervisor; Mr. Ray Hamm.  
3 It could also be directed --- it was  
4 actually determined it was also  
5 directed towards Mr. Barry Blasic as  
6 well.

7 Q. In regard to Mr. Blasic, Ms.  
8 Lewen's actions involving Mr. Blasic  
9 involved to a great extent the posting  
10 of messages on Facebook and the sending  
11 of e-mails from her private account to  
12 Mr. Blasic's private account; correct?

13 A. Yes.

14 Q. In other words, many of her  
15 actions were from --- were off duty  
16 conduct?

17 A. Yeah, a lot of it was.

18 Q. Well, I'd like to invite your  
19 attention to the language in the  
20 section captioned violence. Does this  
21 policy, this PIM 09-008, does that  
22 discuss acts of workplace violence that  
23 occurred away from the workplace?

24 A. It does. If I could draw your  
25 attention down it looks like, I want to

1 say around the sixth line. It says,  
2 incidents of workplace violence may  
3 occur at or away from the workplace.

4 Q. So this policy encompasses  
5 conduct that is --- that occurs away  
6 from the facility as well as in the  
7 facility. Is that fair to say?

8 A. Yes.

9 Q. Very good. Okay. Thank you.

10 Let's move on to the next exhibit,

11 which is management directive number  
12 205.33 marked as Appointing Authority's  
13 Exhibit Number 8. In making the  
14 decision to fire Ms. Lewen did PSSH  
15 consider that Ms. Lewen had violated  
16 the provisions of management directive  
17 205.33?

18 A. Yes, we did.

19 Q. I'd like to invite your  
20 attention to page two of the management  
21 directive, subparagraph C.

22 A. Okay.

23 Q. This is the subsection captioned  
24 inappropriate workplace behavior?

25 A. Correct.

1 Q. Is it PSSH's position that Ms.  
2 Lewen violated this particular  
3 subsection of management directive  
4 205.33?

5 A. Yes, it is.

6 Q. And in what way?

7 A. It would be in the same way that  
8 I just spoke to about the policy  
9 information memorandum. Again, the  
10 unusual change in behavior, the  
11 personal conflict or on the job  
12 relationships and the substantive  
13 behavior.

14 Q. All right. Let's talk about the  
15 subsection marked violence. Take a  
16 moment to review that. PSSH isn't  
17 saying that Ms. Lewen actually  
18 committed an act of physical violence  
19 against anybody; is that correct?

20 A. No, it's not.

21 Q. What is PSSH saying in regard to  
22 this subsection?

23 A. This would be further into the  
24 sentence there where it cites the  
25 emotional harm to an individual or the



1 threat of such harm to individual or  
2 the property. Again, you know, there  
3 was great emotional harm dealt to Mr.  
4 Blasic through this whole thing. Also  
5 to the supervisor, Mr. Ray Hamm, and  
6 also through her comments that were  
7 made.

8 So prior to the PDC and during  
9 the PDC and then even after the PDCs  
10 had been concluded threatening  
11 workplace violence to not just a  
12 person, but the entire facility. And  
13 if I remember correctly there were ---  
14 during the PDC or ---.

15 I want to say it was during the  
16 PDC she even went as far as to say  
17 that, you know, I pray for PSSH, I fear  
18 that there may one day be bloodshed at  
19 PSSH. Just very off color remarks.  
20 There were comments that were made both  
21 in a message, in an e-mail and it was  
22 also made in person to the director of  
23 nursing who would be Ms. Kathy Wilcox  
24 in reference to someone going out to  
25 their car in the parking lot, getting a

1 gun, coming back in here and shooting  
2 somebody.

3 These comments were made  
4 multiple times, which led to great fear  
5 within the facility, not just with the  
6 workers but also with the management.

7 Q. All right. Let's talk about the  
8 last policy, which is marked as  
9 Appointing Authority's Exhibit Number  
10 9. This is management directive 205.34

11 and it is the Commonwealth of  
12 Pennsylvania information technology  
13 acceptable use policy. Now, let me ask  
14 you this. Did PSSH fire Nancy Lewen  
15 for surfing the internet?

16 A. No.

17 Q. It was something more serious;  
18 correct?

19 A. Yes. The IT policy is just a  
20 portion of the investigation.

21 Q. Now, this policy's a little  
22 confusing, okay, so --- because there's  
23 actually two things tacked onto it.  
24 There is the initial management  
25 directive, which goes from page one

1 through six, and then I don't know  
2 exactly how this works, but then  
3 there's another section that starts  
4 after page six that's captioned  
5 Commonwealth acceptable use standards  
6 for information technology IT  
7 resources. Are you there, please?

8 A. Yes.

9 Q. All right.

10 A. If I can clear it up just for  
11 the record. What it is is there's the  
12 management directive and within the  
13 Commonwealth the management directives  
14 sometimes have what they call  
15 attachments or enclosures much like our  
16 internal policies do. This would be  
17 considered the first enclosure attached  
18 to this particular management  
19 directive.

20 Q. All right. Inviting your  
21 attention to page two of this second  
22 section, subparagraph E.

23 HEARING OFFICER:

24 I'm sorry, Mr. Bushinski.

25 I'm having difficulty.

1 ATTORNEY BUSHINSKI:

2 Okay.

3 MS. STOVALL:

4 In about here

5 (indicating).

6 A. Yeah. The first six pages are  
7 the actual policy and then ---.

8 MS. STOVALL:

9 Yeah, after page six  
10 you'll see page one of nine and it's

11 right --- it's attached. You know,  
12 it's a little ---.

13 HEARING OFFICER:

14 Page one and page two?

15 MS. STOVALL:

16 Do you want me to find it  
17 for you? Here, I'll show you.

18 ATTORNEY BUSHINSKI:

19 Inexplicably, Mr. Zurn,  
20 for some reason the --- instead of  
21 going --- continuing on after page six  
22 they decided ---.

23 HEARING OFFICER:

24 Thank you.

25 ATTORNEY BUSHINSKI:

1 I don't quite understand  
2 it.

3 HEARING OFFICER:

4 Thank you very much.

5 MS. STOVALL:

6 You're welcome.

7 HEARING OFFICER:

8 There's another page one  
9 of one, too.

10 A. Yeah, there's two --- it can be  
11 a confusing policy. There's two  
12 attachments to it.

13 BY ATTORNEY BUSHINSKI:

14 Q. Okay. So, just so we make sure  
15 it's clear for the record, going to  
16 page two of the second section,  
17 subparagraph E, are you there?

18 A. Yes, sir.

19 Q. Can you please read that for the  
20 record --- read that into the record  
21 because it's very brief.

22 A. All right. Authorized users may  
23 not purposely engage in activity that  
24 may harass, threaten or abuse others,  
25 degrade the performance of IT

1 resources, deprive an authorized user  
2 of access to an IT resource or obtain  
3 extra IT resources beyond those  
4 allocated or circumvent the IT resource  
5 security measures.

6 Q. So that Mr. Zurn and the  
7 Commission is clear, tell Mr. Zurn and  
8 the Commission exactly what --- how  
9 PSSH considers that Ms. Lewen violated  
10 this subsection.

11 A. This would have been done  
12 through the e-mail that was sent from  
13 her e-mail to Mr. Blasic's Commonwealth  
14 e-mail.

15 Q. Her e-mail? Her work e-mail or  
16 her private e-mail?

17 A. I want to say to the best of my  
18 recollection it would be her workplace  
19 e-mail to his workplace e-mail.

20 Q. And what did that e-mail  
21 contain?

22 A. This would have been the e-mail  
23 that was sent to Mr. Blasic telling him  
24 that the letter had been sent to his  
25 wife and it provided a tracking number.

1 for him to go and look at it.

2 Q. All right. So the letter, which  
3 will be discussed later, is a letter to  
4 Mr. Blasic's wife, was sent by Ms.  
5 Lewen?

6 A. Yes, it was a letter that was  
7 sent by Ms. Lewen.

8 Q. And she used her Commonwealth  
9 e-mail resources to tell him that she  
10 sent that letter to his wife?

11 A. Yes.

12 Q. And that's what we're saying ---  
13 that's why we're saying --- you're  
14 saying that the PSSH is saying that she  
15 violated this policy because of that?

16 A. Yes, because in the  
17 investigation it was determined that  
18 this was done in a harassing or  
19 threatening manner.

20 Q. So let's get off the subject of  
21 policies and talk about Ms. Lewen's  
22 whistleblower claim. Now, in her  
23 appeal she said that PSSH discriminated  
24 against her and that PSSH didn't have  
25 just cause to terminate her, and also

1 that PSSH fired her because she ..  
2 made a whistleblower law claim.

3 She's basically saying that she  
4 made a complaint to a government agency  
5 and PSSH found out about that and  
6 that's why they fired her. That's what  
7 a whistleblower law complaint is all  
8 about.

9 A. Okay.

10 Q. Now, during the period that you  
11 were investigating the allegations  
12 against Ms. Lewen from March 2nd, 2016  
13 through March 24th, 2016, were you  
14 aware that she had made complaints of  
15 resident abuse or resident neglect to  
16 the Commonwealth of Pennsylvania  
17 Department of Health?

18 A. No, not during our  
19 investigation.

20 Q. Did you know that prior to her  
21 being fired?

22 A. No.

23 Q. Did you know that she had made a  
24 complaint to the Commonwealth of  
25 Pennsylvania Office of the Attorney



1 General?

2 A. No, I did not know that.

3 Q. So we're clear for the record,  
4 let me restate that. Did you know  
5 prior to March 14th of 2016, the date  
6 that Ms. Lewen was fired, that she had  
7 made a complaint to the Commonwealth of  
8 Pennsylvania Office of Attorney  
9 General?

10 A. No.

11 Q. When making the decision to ---  
12 as to what level of discipline to  
13 impose upon her, was there --- did  
14 Barbara Raymond state that Ms. Lewen  
15 had made a complaint to the Department  
16 of Health or to the Commonwealth of  
17 Pennsylvania, Office of Attorney  
18 General?

19 A. No, she did not.

20 Q. Did anyone make any such  
21 statement, that she had made a  
22 complaint to the Department of Health  
23 or the Office of Attorney General?

24 A. No, nobody did.

25 Q. All right. I want to direct

1 your attention back to the March 10th,  
2 2000 (sic) PDC. I want to ask you some  
3 additional questions about this PDC.  
4 Now, during the PDC that you conducted  
5 on March 10th, 2016, did you  
6 specifically ask Nancy Ms. Lewen  
7 whether she had mentioned something  
8 about going out and getting a gun and  
9 shooting people at PSSH?

10 A. Yes. Yes, I did.

11 Q. ~~Did she admit to you that she~~  
12 had made such a statement?

13 A. Yes.

14 Q. Can you remember her exact words  
15 for the Commission and for Mr. Zurn?

16 A. She had made reference to  
17 herself as being someone diagnosed with  
18 PTSD and she stated that --- I believe  
19 it was another supervisor was yelling  
20 at her when she went into the office  
21 and she stated that you need to be  
22 careful who you yell at because when  
23 you yell at someone with PTSD that  
24 person may very well go out to the car,  
25 get a gun and come back in and shoot

1 him and her.

2 Q. Was it clear to you that she was  
3 talking of herself?

4 A. As she referenced herself as a  
5 person with PTSD within the same  
6 sentence, yes, it was.

7 Q. Did this statement cause you any  
8 sort of concern?

9 A. It caused me great concern.

10 Q. Why? What was the concern?

11 A. Well, because, you know,  
12 especially me not being here at the  
13 facility I'm conducting these  
14 investigations by phone. So, you know,  
15 that's the whole reason of us having a  
16 central office. It detaches us from  
17 having, you know, knowledge of the  
18 employee, which leads us to give like a  
19 non-biased opinion when we're doing  
20 these types of investigations.

21 Well, not knowing this person,  
22 hearing these comments caused great  
23 concern especially with all the  
24 different things that you see in the  
25 news, you hear about, you know, the

1 different protocols that we have in  
2 place now. And let's face it, today's  
3 day and age it is a very serious  
4 allegation.

5 This immediately caused great  
6 concern for not just me, but the home  
7 and the staff that I work with as well,  
8 like, okay, is this woman capable of  
9 inflicting any type of harm to not only  
10 someone here, but also herself?

11 Q. ~~Let me go back to the March 7th~~  
12 PDC, March 7th, 2016. I want to ask  
13 you a couple of questions about the  
14 matter involving Mr. Ray Hamm. Now,  
15 during the course of that PDC, did you  
16 tell Ms. Lewen that her actions  
17 involving Mr. Ray Hamm, which she had  
18 provided him with a complaint that she  
19 alleges she was going to file, did you  
20 tell her her actions were  
21 inappropriate?

22 A. Yes, we did.

23 Q. How did she respond to that?

24 A. She did not feel it was  
25 inappropriate. She just said, well, I

1 was just bringing it to his attention.  
2 To which, you know, I responded --- and  
3 also there were other people in the PDC  
4 as well. I know Ms. Kim Keiser was in  
5 it who is one of my supervisors.

6 We both had questioned her then  
7 on, you know, that is not like your  
8 typical procedure for doing something  
9 like this. If you have a complaint you  
10 may go talk to your supervisor or

11 something like that, but someone does  
12 not typically write a four-page  
13 discrimination complaint and then go  
14 and hand it to somebody who they're  
15 allegedly going to file it on.

16 Q. At some point in time during  
17 that conversation did Ms. Lewen state  
18 to you that she did not sign the  
19 discrimination complaint?

20 A. Correct. Yeah. She made  
21 reference when we brought it up that it  
22 was inappropriate the way that she  
23 handled it. Her response to it was,  
24 well, I never signed it anyway, so we  
25 talked about it.

1 ATTORNEY BUSHINSKI:

2 All right. Thank you.

3 No further questions, Mr. Zurn.

4 HEARING OFFICER:

5 Ms. Lewen, do you have  
6 some questions of Mr. Bender?

7 CROSS EXAMINATION

8 BY MS. LEWEN:

9 Q. I don't have prepared questions,  
10 but you're saying that on --- in these

11 Facebook messages you definitely were  
12 not aware of all of the content of it;  
13 right?

14 A. Initially no. We were made  
15 aware of them later.

16 MS. LEWEN:

17 Okay. I don't ---.

18 HEARING OFFICER:

19 Okay. Thank you very  
20 much.

21 ATTORNEY BUSHINSKI:

22 All right. Thank you,  
23 Mr. Bender.

24 HEARING OFFICER:

25 Thank you, Mr. Bender.

1 Before we go, we have Joint Exhibit  
2 AA-1 and AP-1 and we're going to enter  
3 that as a part of the record. You've  
4 introduced a number of documents here,  
5 Mr. Bushinski. You do want those made  
6 a part of the record?

7 ATTORNEY BUSHINSKI:

8 Yes, I move for their  
9 admission into the record.

10 HEARING OFFICER:

11 Any objection, Ms. Lewen?

12 MS. LEWEN:

13 No.

14 HEARING OFFICER:

15 Made a part of the  
16 record. Thank you very much. Thank  
17 you, Mr. Bender.

18 ATTORNEY BUSHINSKI:

19 I call my next witness,  
20 Mr. Barry Blasic.

21 HEARING OFFICER:

22 Good morning, Mr. Blasic.  
23 I want you to stand for a moment,  
24 please, and raise your right hand.

25 -----

1 BARRY BLASIC, HAVING FIRST BEEN DULY  
2 SWORN, TESTIFIED AS FOLLOWS:  
3 -----

4 HEARING OFFICER:

5 Thank you. Please be  
6 seated, Mr. Blasic. And for the record  
7 your name, spelling your last name.

8 A. Barry Blasic, B-L-A-S-I-C.

9 HEARING OFFICER:

10 And, Mr. Blasic, you're  
11 employed by the Soldiers' and Sailors'  
12 Home; ---

13 A. Yes.

14 HEARING OFFICER:

15 --- is that correct? And  
16 your position, sir?

17 A. LPN.

18 HEARING OFFICER:

19 And you've been in that  
20 position how long?

21 A. Since December of 2011.

22 HEARING OFFICER:

23 Thank you. You may  
24 proceed.

25 ATTORNEY BUSHINSKI:



1 Thank you.

2 DIRECT EXAMINATION

3 BY ATTORNEY BUSHINSKI:

4 Q. Mr. Blasic, when did you first  
5 meet Nancy Lewen?

6 A. Specifically I couldn't say. It  
7 was shortly after she was hired.

8 Q. And did you first meet her at  
9 work?

10 A. Yes.

11 Q. Have you ever been her  
12 supervisor?

13 HEARING OFFICER:

14 Keep your voice up.

15 MS. STOVALL:

16 Keep your voice up or I'm  
17 going to have you move here  
18 (indicating).

19 HEARING OFFICER:

20 This is the most  
21 important person in the room and she  
22 wants to make sure she hears what you  
23 have to say, Mr. Blasic. Okay?

24 A. Absolutely.

25 HEARING OFFICER:

1 Thank you, sir.

2 A. No.

3 BY ATTORNEY BUSHINSKI:

4 Q. All right. Mr. Blasic, think  
5 that you're back in the Army again and  
6 you're talking to the sergeant. So  
7 let's do this a little --- we'll raise  
8 our voices for both of us so the  
9 stenographer can get all this. Did at  
10 some time you and Ms. Lewen work the  
11 same shift?

12 A. Yes.

13 Q. And sometimes you did work  
14 together?

15 A. Yes.

16 Q. In August of 2015, did you and  
17 Nancy Lewen begin to communicate via  
18 social media platform known as  
19 Facebook?

20 A. Yes.

21 Q. How did it come about that you  
22 began to communicate with Ms. Lewen on  
23 Facebook?

24 A. She sent a friend request to me  
25 which I accepted.

Now, the contact that you had  
her on Facebook is that what's  
commonly known as Facebook messages or  
posts?

A. Yeah, that would be posts I  
believe.

Q. Now, perhaps some members of the  
Commission are as poorly versed in  
technology as I am. Can you explain

exactly what a Facebook post is? Is it  
like an e-mail message?

A. Not exactly. It would be more  
--- I would think an e-mail message is  
a more one-on-one type of communication  
where a Facebook post can be viewed by  
multiple people.

Q. Can a Facebook post be  
restricted, could be viewed privately?

A. I believe it could be, sir.

Q. Your Facebook posts with Nancy  
Lewen, were they private?

A. They were posts that were public  
and then there are messages that are  
private.

Q. Well, that's where you need to

Help me out, Mr. Blasic, because I  
really don't know the difference  
between a message and a post. Okay?  
So when we're talking about the  
communications that you had with Ms.  
Lewen are we talking that you had more  
Facebook posts or messages?

A. Messages.

Q. Now, are messages like e-mails?

A. Yes.

Q. And can they be restricted so  
that people who are e-mailing each  
other --- messaging each other on  
Facebook are the only persons seeing  
those messages?

A. That is correct.

Q. Is that how you conducted your  
correspondence with Nancy Lewen?

A. Yes.

Q. So the messages that you sent  
back and forth to Nancy Lewen, those  
were private?

A. Yes.

Q. They couldn't be seen by anybody  
else?

1 A. No.

2 Q. All right. Did you also  
3 communicate with her by means of  
4 regular e-mail at some time?

5 A. Yes, I did.

6 Q. Let's go back to the Facebook  
7 messages and if I have the --- if I use  
8 the wrong term, please correct me. All  
9 right?

10 A. Yes.

11 Q. How long did you communicate  
12 with Nancy Lewen via Facebook?

13 A. From August of 2015 'til the end  
14 of February of this year, 2016.

15 Q. Was there a period of time in  
16 the month of January 2016 that you  
17 stopped responding to Ms. Lewen's  
18 Facebook messages?

19 A. Yes.

20 Q. Why did you stop responding to  
21 her Facebook messages in January of  
22 2016?

23 A. Primarily because I felt that  
24 her feelings towards me and my feelings  
25 towards her were not the same.

1 Q. Well, I know this is a little  
2 bit difficult for you and you don't  
3 want to embarrass anybody and you don't  
4 want to embarrass yourself or you don't  
5 want to embarrass Ms. Lewen, but we're  
6 going to have to get into some  
7 specifics here. Okay?

8 A. All right.

9 Q. In her Facebook messages to you  
10 in 2015 and 2016 was Ms. Lewen

11 importuning you for a romantic  
12 relationship?

13 A. Yes.

14 Q. Was she asking you out on dates?

15 A. Yes.

16 Q. Where was she asking you to go  
17 on a date say?

18 A. Cleveland Museum of Art.

19 Q. Did she ask you to go to the  
20 Cleveland Museum of Art one time or  
21 multiple times?

22 A. Multiple times.

23 Q. Now, is this why you stopped  
24 responding to her e-mail messages ---  
25 her Facebook messages in January of

1 2016?

2 A. Not specifically, no. The  
3 reason that I stopped responding was  
4 because I had agreed to go to the  
5 museum with her and in her own words  
6 merely as friends at that time. And  
7 shortly after that her response was  
8 that she was very happy that I had  
9 decided to go on a date.

10 And I was very put off by that,  
11 so I believe it was right around that  
12 time that I just stopped responding to  
13 any of her communications.

14 Q. All right. So, again, you had  
15 concluded that Ms. Lewen wanted to have  
16 a romantic or sexual relationship with  
17 you?

18 A. Yes.

19 Q. And that was because of the  
20 content of her Facebook messages?

21 A. Yes.

22 Q. This is a hard question for you  
23 to answer with her being in the room  
24 here, but I'm about to ask you. I have  
25 to put it to you. Have you ever wanted

1 to have a romantic or sexual  
2 relationship with Nancy Lewen?

3 A. No, I did not.

4 Q. After you concluded that she  
5 wanted to have this relationship with  
6 you, at some point in time did you  
7 actually sit down with her and tell her  
8 that?

9 A. Yes.

10 Q. When did that happen?

11 A. It was here at work on an  
12 evening when she came to relieve me  
13 when I was working on the Alzheimer's  
14 unit, unit E. And she came in, like I  
15 said, to relieve me so that I could go  
16 home.

17 Q. What was her physical appearance  
18 like?

19 A. She had her hair done and she  
20 was wearing makeup and lipstick, and  
21 just more time spent getting ready than  
22 normal for work.

23 Q. Did you conclude that these  
24 attentions, these extra attentions were  
25 directed to you?



1 A. Yes.

2 Q. Now, you actually had a  
3 conversation with her about a romantic  
4 relationship?

5 A. We did have a conversation at  
6 that time when she came in to relieve  
7 me and a lot of it was precipitated by  
8 the communications, the previous  
9 communications, and then also by the  
10 fact of her appearance when she came  
11 in. It was very obvious that to me  
12 that she was, you know, trying to get  
13 my attention in that way.

14 And I at that time attempted to  
15 explain as diplomatically as possible  
16 that that --- you know, she and I were  
17 not on the same page. And I was not  
18 interested in a relationship.

19 Q. All right. Now, can you tell me  
20 approximately what month this took  
21 place?

22 A. I want to say January of this  
23 year.

24 Q. After you had this conversation  
25 with Ms. Lewen did she continue to send

1 you messages on Facebook?

2 A. Yes.

3 Q. In general terms how many did  
4 she send you?

5 A. A lot. I couldn't say  
6 specifically on any particular day, but  
7 most of them were very innocuous. It  
8 wasn't until the end of February when I  
9 received 20 or more messages on  
10 Saturday and then somewhere in the

11 neighborhood of 40 or more messages on  
12 Sunday of the last days of February  
13 that I decided at that time that I just  
14 was completely uncomfortable with the  
15 situation as it was and it needed to  
16 stop. And I would block her.

17 Q. Mr. Blasic, you're getting a  
18 little ahead of me, but that's okay.  
19 Okay? I know that you're nervous here.  
20 What I'd like to do is I would like to  
21 ask you to take a look at the document  
22 that I'm having marked as Appointing  
23 Authority's Exhibit Number 10.

24 (2/6/16 E-mail --  
25 produced and marked for

1 identification as  
2 Appointing Authority  
3 Exhibit Number 10.)

4 BY ATTORNEY BUSHINSKI:

5 Q. Can you identify that document  
6 for the record, please?

7 A. I'm familiar with it. I'm not  
8 100 percent certain if this came as ---  
9 I'm going to assume this was a Facebook  
10 message, but I don't know for sure.

11 Q. Well, this is a work e-mail  
12 message. Let me ask you this, Mr.  
13 Blasic. Okay? This message that you  
14 got on February 6th of 2016 was this  
15 possibly as a result of the conference  
16 you had with Ms. Lewen when you told  
17 her that you weren't interested in a  
18 romantic relationship with her?

19 A. Is it possible? Yes, it is  
20 possible.

21 Q. All right. Thank you. During  
22 the month of January 2016, did Ms.  
23 Lewen send you Facebook messages in  
24 which she told you that she loved you  
25 outright?

1 A. Without looking at them  
2 specifically I'm not 100 percent sure,  
3 but probably.

4 Q. Well, let's take a look at some  
5 of them specifically. I'm handing you  
6 what has been introduced into the  
7 record as a Joint Exhibit marked as  
8 Appointing Authority Exhibit Number 1  
9 and Appellant's Exhibit Number 1.  
10 These are, as Ms. Lewen has already

11 agreed, Facebook messages that passed  
12 between the two of you.

13 She provided them to us. There  
14 are quite a lot of them so that's why  
15 it's taking a little bit of time for me  
16 to get there. I'm showing you what has  
17 --- showing you page 32 of the exhibit  
18 of Appointing Authority's Exhibit  
19 Number 1, Appellant's Exhibit Number 1  
20 lines 25 through 29. Can you please  
21 read that into the record?

22 A. Twenty-five (25) through 29?

23 Q. Right.

24 A. If you don't need to move in as  
25 refugees asap, I want you to know that

1 I love you and when I was sleep  
2 deprived and giddy the other night in  
3 my reddish lipstick it really turned me  
4 on that you're still so faithful to  
5 your marriage vows.

6 However, I strongly suspect that  
7 if I served you some alcohol with a  
8 date rape drug in it you could most  
9 likely cheat on your wife, even though  
10 you've been faithful for approximately  
11 20 years or so.

12 Q. Thank you. Were other messages  
13 suggestive that Ms. Lewen loved you?  
14 Can you remember that? If you can't,  
15 we'll move on.

16 A. I can't remember any specific  
17 ones that --- but I'm quite sure that  
18 there were.

19 Q. All right. That's fine. Were  
20 any of her Facebook messages sexually  
21 suggestive at all?

22 A. Yes.

23 Q. In what way?

24 A. At least two of them had links  
25 or some screenshot, some link to

1 another website that was --- that  
2 showed different sexual positions.

3 Q. Did these messages, these  
4 sexually suggestive messages, did they  
5 make you feel uncomfortable in any way?

6 A. Yes, they did.

7 Q. I want you to go to page 12 of  
8 the exhibit, line 16 through 27.  
9 Starting at line number 16, would you  
10 continue --- would you read that into  
11 the record, please?

12 A. I was stalking you this morning  
13 for about ten seconds on my way out the  
14 door. OMG, Barry, that was long  
15 enough, you sexy thing. Honest to God,  
16 from the first time I ever saw you sick  
17 I've always thought that you had the  
18 most sexiest sick voice I have ever  
19 heard in my entire life.

20 If you were my sweetheart I  
21 would have immediately had the pressure  
22 cooker whipped out and some deliciously  
23 healing homemade chicken noodle soup  
24 right in your mouth faster than your  
25 runny nose could have ran away and hid

1 from me.

2 During the impressively speedy  
3 cooking time I would have carried you  
4 to bed, stripped you to your undies,  
5 slathered your entire body with Vicks  
6 Vapo Rub and smashed your face into my  
7 matronly bosom to feel your head to  
8 test for fever. Resistance on your  
9 part would have been futile.

10 If you even opened up your mouth  
11 to protest, I would have thrown a cough  
12 drop in from my own personal stash of  
13 Halls. You're not my sweetheart  
14 though. And besides I'm working on  
15 unit E this weekend, have no social  
16 life at home and have some typing work  
17 to do. Sucks to be you, Barry. Hope  
18 you feel better. Seriously, stay  
19 hydrated.

20 Q. Mr. Blasic, did this e-mail  
21 message embarrass you?

22 A. Yes.

23 Q. Did all these e-mail --- I'm  
24 sorry. Did the Facebook messages  
25 embarrass you is what I meant to say.

1 Did this Facebook message and the  
2 others sexually suggestive Facebook  
3 messages, did they cause you to wish to  
4 avoid Nancy Lewen at work?

5 A. Yes, they did.

6 Q. Do you feel that Nancy Lewen was  
7 sexually harassing you by sending you  
8 these sexually explicit Facebook  
9 messages saying that she loved you,  
10 saying that she was stalking you?

11 A. Yes, absolutely.

12 Q. Do you feel that you are the  
13 victim of sexual harassment from Nancy  
14 Lewen?

15 A. I do. I do, yes.

16 Q. Thank you. Very good. We'll  
17 move off the subject of sexual  
18 harassment. I know that's a very  
19 uncomfortable subject to talk to you  
20 about. Let's talk about some of the  
21 events of February of 2016. At some  
22 point in February of 2016, did you  
23 block Nancy Lewen from sending you  
24 Facebook messages?

25 A. Yes, I did.



1 Q. Now, referring you to Appointing  
2 Authority's Exhibit Number 1,  
3 Appellant's Exhibit Number 1 which you  
4 have before you, is the message that  
5 you sent to Nancy Lewen the very first  
6 message on page one?

7 A. Yes, it is.

8 Q. Why did you send her this  
9 message blocking her on Facebook?

10 A. As I stated in the message, it  
11 was just --- too many messages were  
12 coming in. It was too many references  
13 to a relationship, things that I was  
14 not interested in and it was just a  
15 distraction. You know, I already had  
16 enough issues going on in my own life,  
17 going through divorce and, you know,  
18 teenage kids and trying to get custody  
19 and all the other things that go along  
20 with that.

21 And this just was compounding  
22 all the anxiety and everything else  
23 that went along with it.

24 Q. Mr. Blasic, again, could you ---  
25 you know, you must consider that I'm

1     technologically illiterate. How do you  
2     go about stopping her from sending you  
3     Facebook messages?

4     A.       On Facebook you have settings  
5     that you can go into and block people  
6     that you have contacts with.

7     Q.       After you blocked Nancy Lewen on  
8     February 29th of 2006, did she send you  
9     an e-mail on March 1st of 2016  
10    concerning your wife, Jennifer Blasic?

11   A.       Yes, she did.

12   Q.       Did that e-mail contain a copy  
13   of a letter that Nancy Lewen wrote to  
14   your wife?

15   A.       Yes, it did.

16   Q.       Mr. Blasic, I'm handing you what  
17   has been marked as Appointing  
18   Authority's Exhibit Number 11.

19                   (3/2/16 E-mail --  
20                   produced and marked for  
21                   identification as  
22                   Appointing Authority  
23                   Exhibit Number 11.)

24   BY ATTORNEY BUSHINSKI:

25   Q.       Will you take a moment to look

1 at that document?

2 WITNESS COMPLIES

3 BY ATTORNEY BUSHINSKI:

4 Q. Mr. Blasic, is that --- the  
5 document marked as Appointing  
6 Authority's Exhibit Number 11 is that a  
7 copy of an e-mail dated March 1st of  
8 2016 sent to you by Nancy Lewen?

9 A. Yes, it is.

10 Q. Now, did you provide a copy of  
11 this document to Mr. Bryan Bender or  
12 anyone at PSSH?

13 A. Yes, I did.

14 Q. Did you alter this document in  
15 any way or form as it was received by  
16 you?

17 A. No, no.

18 Q. So is it fair to say that it is  
19 a true and correct copy of the e-mail  
20 sent to you by Nancy Lewen?

21 A. Absolutely.

22 Q. At the time you received this  
23 e-mail from Nancy Lewen were you in the  
24 process of being divorced from your  
25 wife, Jennifer Blasic?

1 A. Yes, I was.

2 Q. Were you divorced from your  
3 wife, Jennifer, at the time that she  
4 sent this?

5 A. No.

6 Q. Are you divorced now?

7 A. No, I'm not.

8 Q. Did Nancy Lewen know that you  
9 were in the process of being divorced  
10 from Jennifer Blasic?

11 A. Yes.

12 Q. How did she know that?

13 A. Probably because I told her.

14 Q. You discussed this with her?

15 A. Yes. Yes, I discussed it with  
16 many of my co-workers. It was very  
17 well known.

18 Q. As to the letter that Ms. Lewen  
19 wrote to your wife, do you know when  
20 she sent that to your wife?

21 A. It would have been on the date  
22 of the e-mail, March 1st.

23 Q. Or March 2nd? Well, let's not  
24 go there. Let me withdraw that  
25 question. Okay.

1 ATTORNEY BUSHINSKI:

2 Where is that now, the  
3 next one? Send that to Mr. Zurn.

4 MS. STOVALL:

5 Yeah, he has it.

6 BY ATTORNEY BUSHINSKI:

7 Q. I'm showing you what I've marked  
8 as Appointing Authority's Exhibit  
9 Number 12.

10 (3/2/16 E-mail --

11 produced and marked for  
12 identification as  
13 Appointing Authority  
14 Exhibit Number 12.)

15 BY ATTORNEY BUSHINSKI:

16 Q. Can you identify this document  
17 for the record?

18 A. Yes, this is an e-mail that I  
19 received. I believe this is my work  
20 e-mail, my Commonwealth e-mail with a  
21 tracking number regarding the letter  
22 that we were just discussing to my  
23 wife.

24 Q. So it's a tracking number?

25 A. Yes.